Supreme Court, U.S.
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NO. 80-621

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

STATE OF WASHINGTON,
Petitioner,

v.

SOLOMON HANTON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Where the Washington Supreme Court has construed self-defense as negating an element of the State manslaughter statute, can the defendant be required to prove self-defense?

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Respondent, Solomon Hanton, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the opinion of the Supreme Court of the State of Washington in this case. That opinion is reported at 94 Wn.2d 129, ___ P.2d ___.

JURISDICTION

This case is not within the jurisdiction of this Court. Petitioner alleges jurisdiction under 28 U.S.C. § 1257(3). No jurisdiction lies under that section, because the validity of a treaty or statute of the United States or of the State of Washington is not drawn in question. Nor is any title, right, privilege, or immunity specially set up or claimed under the Constitution, treaties or statutes of, or commission held, or authority exercised under, the United States.

The Washington Supreme Court in this case construed the manslaughter statute of the State of Washington, Wash. Rev. Code 9A.32.060, as requiring the State to prove the absence of self-defense in a prosecution for manslaughter. The Washington Supreme Court did not question the validity of the State statute, nor does petitioner

State of Washington. The questions presented are peculiarly a matter of State law and this Court has no jurisdiction to review the decision of the Washington Supreme Court.

STATEMENT OF THE CASE

This prosecution arises out of an incident in which respondent Solomon Hanton was unexpectedly attacked as he sat in his car at a traffic light. The incident is adequately described in the opinion of the Washington Supreme Court, 94 Wn.2d at 130. Mr. Hanton drew a pistol and shot his attacker.

The facts of the incident were largely undisputed at trial. The sole question was whether Mr. Hanton reasonably acted in self-defense or whether Mr. Hanton's actions were reckless and therefore constituted manslaughter. The trial court

instructed the jury over Mr. Hanton's objection that the burden was on Mr. Hanton "to produce some evidence tending to prove that the homicide was done in self-defense". (Instruction No. 13.)

REASONS FOR DENYING THE WRIT

The Washington Supreme Court Construed Self-Defense as Negating an Element of The State Manslaughter Statute, and Correctly Held That the Defendant Could Not Be Compelled to Disprove an Element of the Offense.

This Court has repeatedly held that the due process clause of the Fourteenth Amendment to the United States Constitution requires the prosecution to prove beyond a reasonable doubt every fact necessary to constitute the crime with which an accused is charged. Mullaney v. Wilbur, 421 U.S. 684 (1975); In re Winship, 397 U.S. 358 (1970). The crime of manslaughter in the first degree is defined by Wash. Rev. Code 9A.32.060 as recklessly causing the death

of another person. The Washington Supreme Court in its opinion in this case construed recklessness as inconsistent with self-defense. 94 Wn.2d at 133.

The sole issue before this Court is whether a defendant may be required to prove facts which negate an element of the offense with which he is charged. Only one answer is possible: the prosecution must prove all elements of the offense beyond a reasonable doubt and the defendant may not be required to disprove any element of the offense.

This case is clearly controlled by Mullaney v. Wilbur, supra. The State of Maine defined murder as an unlawful killing of a human being with malice aforethought. Malice aforethought was considered to be inconsistent with a killing in the heat of passion on sudden provocation. However, the State required the defendant to prove

that he acted in the heat of passion on sudden provocation, thereby negating the element of malice aforethought.

This Court held that the defendant could not be required to disprove an element of the offense: "We therefore hold that the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case." 421 U.S. at 704.

Petitioner State of Washington argues for the precise result rejected by the Court in Mullaney v. Wilbur, supra. The State contends that the defendant in a manslaughter prosecution may be compelled to disprove an element of the offense. The State's position is without merit and the petition for a writ of certiorari should be denied.

Petitioner State of Washington argues that the Washington Supreme Court improperly held that the State is required to disprove an affirmative defense. Petitioner State argues that the decision below conflicts with Patterson v. New York, 432 U.S. 197 (1977). The State's position misapprehends the holding of the Washington Supreme Court in this case. The Washington Supreme Court never even addressed the question of who must prove or disprove affirmative defenses under the Washington Criminal Code. The Court's decision, as discussed above, is based upon an analysis of the elements of manslaughter. Indeed, the Washington Supreme Court specifically found it necessary to address the legislative intent to allocate the burden of proving or disproving affirmative defenses on either party. 94 Wn.2d at 133.

The decision of the Washington Supreme Court in no way conflicts with Patterson v. New York, supra. In Patterson, this Court construed a homicide statute that provided for the affirmative defense of extreme emotional disturbance. This emotional defense mitigated the punishment, but in no way negated the elements of homicide which the State was required to prove. By contrast, in this case proof of self-defense negated recklessness, the critical element that the State was required to prove.

The petitioner's misapprehension of the grounds for the decision below leads the petitioner into a misdirected argument that the decision conflicts with decisions of federal courts of appeals. Petitioner cites federal cases dealing with burden of proof of affirmative defenses. As discussed above, the decision below was not

based upon proof of affirmative defenses, but upon the Washington Supreme Court's interpretation that self-defense negates an element of manslaughter as defined by the Washington Criminal Code. This factor distinguishes the federal cases cited by petitioner and renders irrelevant the alleged conflict among the federal circuit courts.

CONCLUSION

The decision by the Washington Supreme Court was consistent with Mullaney v. Wilbur, supra and in no way conflicts with Patterson v. New York, supra. The decision below construes applicable Washington law and correctly applies well-established constitutional principles to

that statutory scheme. For these reasons, the petition for a writ of certiorari to the Supreme Court of Washington should be denied.

Respectfully submitted,

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